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In the Supreme Court of the United States

OCTOBER TERM, 1991

ITEL CONTAINERS INTERNATIONAL CORPORATION,
PETITIONER

v.

JOE HUDDLESTON, COMMISSIONER OF REVENUE OF
TENNESSEE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

The Tennessee Retailers' Sales Tax Act (Tenn. Code Ann. §§ 67-6-101 *et seq.* (1989 & Supp. 1991)) imposes a tax, at the rate of 5.5% of the transaction amount, upon the sale of "tangible personal property at retail in this state" (Tenn. Code Ann. § 67-6-201 (1989)). The statute defines a "sale" as "any transfer of title or possession, or both, exchange, barter, lease or rental * * * of tangible personal property for a consideration" (*id.* § 67-6-102(23)(A)).

The question presented is whether application of that Act to the lease of shipping containers, delivered at points within the State for use in international transportation of goods, is barred by the Commerce Clause (Art. I, § 8, Cl. 3) or the Import-Export Clause (Art. I, § 10, Cl. 2) of the Constitution of the United States or is preempted by the Customs Convention on Containers, May 18, 1956, 20 U.S.T. 301, T.I.A.S. No. 6634, 338 U.N.T.S. 103, acceded to by the United States effective March 3, 1969, or the Customs Convention on Containers, Dec. 2, 1972, S. Exec. Doc. X, 93d Cong., 1st Sess. (1973), 98 U.N.T.S. 43, acceded to by the United States effective May 12, 1985.

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INTEREST OF THE UNITED STATES

The United States is implicated directly in the questions presented in this case through petitioner's invocation of the Customs Conventions on Containers, to which the United States is a party. The United States also has an interest in matters before this Court involving foreign commerce that implicate the Import-Export Clause and the Commerce Clause of the Constitution. At the Court's invitation, the United States filed a brief *amicus curiae* at the petition stage of this case.

STATEMENT

1. Petitioner is a Delaware corporation with its principal place of business in San Francisco, California. It

is engaged in the business of leasing cargo containers [1] for international use. Petitioner purchases these containers abroad, where they were manufactured. Pursuant to 19 U.S.C. 1322(a) and regulations thereunder (19 C.F.R. 10.41a(a)(1), (c), (d), and (g), 113.66), the containers enter the United States duty-free as "instruments of international traffic," with a continuous bond given by petitioner guaranteeing payment of all duties, taxes, or liquidated damages that could be assessed for failure to comply with regulations regarding diversion or withdrawal of the containers from international commerce. Pet. App. 2a, 28a-30a.

Petitioner solicits leases for its containers through its offices located in numerous cities in the United States, but has no marketing office in Tennessee. The leases are on a per diem basis and restrict the use of containers to international commerce. Subject to that restriction, the lessee determines the route of travel and, to some extent, the period of use. Pet. App. 2a, 30a-31a, 34a.

Petitioner's containers are ordinarily leased at depots in Europe or the United States on an as-available basis under the standardized terms of a Master Interchange agreement. The written lease is normally executed after the container is delivered to the lessee. In some instances, petitioner permits shippers to pick up and load containers and transport them to a steamship line at an international port. In these situations, the steamship line then

[1] The Statement of Stipulated Facts filed by the parties in the Chancery Court describes these containers as follows (Pet. App. 28a) (numbering of sentences omitted): "Containers are specially manufactured steel boxes, 20 or 40 feet long, 8 feet wide and 8.5 or 9.5 feet tall. The containers are uniquely designed so that they may be used to transport goods by a variety of modes, including semi-trailer truck, rail car, or oceangoing vessel. The containers are secured to rolling stock while transported overland in international commerce. Because these containers are designed to be used in a variety of transportation modes, they are uniquely suited for use in international commerce."

enters into the lease agreement directly with petitioner. Pet. App. 32a-34a.

Prior to July 1, 1985, petitioner had no employees or terminals located in Tennessee. Instead, petitioner made arrangements for its containers to be delivered and picked up in that State at depots operated by other persons. Effective August 1, 1985, petitioner leased a tract of land and buildings in Memphis, Tennessee, where it thereafter maintained a terminal building and work station to receive, store, deliver, and, in some circumstances, repair containers.[2] Petitioner continued to allow customers to interchange containers at other depots in Tennessee, although it had no employees at those points. Pet. App. 2a, 31a.

2. Petitioner was audited by the Tennessee Department of Revenue for the period of January 1983 through November 1986. In December 1986, the Department issued an assessment determining that petitioner owed additional sales tax for the audit period. Petitioner paid the additional tax, penalty, and interest (in the amount of $382,465) and then filed a request for refund. After the refund was denied, petitioner brought this suit in state court. Pet. App. 19a, 24a, 34a-36a.

Upon consideration of the testimony and stipulated facts (Pet. App. 27a-37a), the trial court held, as a matter of state law, that the Tennessee Retailers' Sales Tax Act applies only to transactions in which possession of the containers is transferred to lessees in Tennessee and does not apply when lessees take possession outside of the State (*id.* at 20a-21a). The court therefore concluded that the state tax does not apply when the shipper

[2] Petitioner "collects and remits sales and use tax on fees which it collects for repair services rendered in Tennessee" (Pet. App. 2a-3a). The State's sales tax on repair services for containers was not challenged in this case (see *id.* at 3a). Nor does it appear that petitioner has challenged application of either federal or state income taxes that apply to the income petitioner receives from repairing or leasing containers.

loads the container and delivers it to the lessee outside of Tennessee at the port of exit (*ibid.*). Based upon that ruling, the court reduced the assessment of tax, penalty, and interest to $158,012 (*id.* at 24a-25a).

With respect to situations where transfer of possession to the lessee takes place in Tennessee, the court held that application of the State's sales tax is not unconstitutional (Pet. App. 21a). The court observed (*ibid.*) that, under the criteria of *Complete Auto Transit, Inc.* v. *Brady*, 430 U.S. 274 (1977), businesses are not relieved of their just share of the State's tax burden simply because they are engaged in interstate commerce. The court concluded that the Commerce Clause does not require a different result in this case merely because the containers are used for international, rather than interstate, shipments (Pet. App. 21a-22a).

3. The State accepted the decision of the trial court and did not appeal. On petitioner's appeal, the Supreme Court of Tennessee affirmed the judgment of the trial court (Pet. App. 1a-18a). The court rejected petitioner's invocation of *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U.S. 434 (1979), pointing out that (i) in this case, the owner and transferor of the leased containers is a domestic corporation, not a foreign corporation subject to tax in its own nation; and (ii) the tax involved in this case applies to a transaction that occurs within one nation only, so that the Tennessee statute does not impose multiple taxes on a single international transaction (Pet. App. 12a-14a). Because the state tax otherwise satisfies the tests established by *Complete Auto*, the court concluded that its imposition does not violate the Commerce Clause (Pet. App. 12a-16a).

The Tennessee Supreme Court also rejected petitioner's reliance on the Customs Convention on Containers. The court noted that the Convention exempts containers only from customs duties and other taxes imposed by reason of importation, and "Tennessee's sales tax is not a federal customs duty" (Pet. App. 13a). The Court

pointed out that bilateral tax treaties exempt only the "income derived by a *resident of a contracting state* * * * *from the* use, maintenance and *lease of containers* [used in international traffic] * * * from tax in the *other* contracting state" (Pet. App. 7a (quoting Convention for the Avoidance Of Double Taxation, Mar. 8, 1971, United States-Japan, 23 U.S.T. 967, 1084-1085, T.I.A.S. No. 7365)). Those treaty provisions manifest an understanding that income derived by domestic corporations from the "lease" of containers is *not* exempt from domestic taxation (Pet. App. 7a).

Finally, the court observed that the state tax is imposed on the proceeds of leases of shipping containers and "not [on] the value of the goods themselves" (Pet. App. 18a). The court therefore concluded that the state tax is not subject to challenge under the Import-Export Clause of the Constitution (Pet. App. 16a-18a).

SUMMARY OF ARGUMENT

I

The containers involved in this case are owned and leased by a corporation that is organized within, and a resident of, the United States. The Customs Conventions on Containers do not govern the domestic taxation of these domestically owned containers. Instead, petitioner's containers enter the United States under the provisions of 19 U.S.C. 1322(a), which protects them from the exaction of federal customs duties. The Tennessee Supreme Court correctly held (Pet. App. 13a) that the State's general sales tax is not a customs duty. Neither the statute nor the Conventions thus proscribe the State's tax.

Even if the Customs Conventions did apply to petitioner's containers, the Conventions do not restrict imposition of general sales taxes on container leases. Such taxes are not duties or taxes "chargeable by reason of importation" (Pet. App. 41a). They are therefore not within the scope of the Conventions' prohibitions. This

conclusion is manifest from the language and context of the Conventions. It is also evidenced by the practice of many Nations.

II

The Commerce Clause does not proscribe application of the State's general sales tax to container leases. There is no uniform international custom or practice of exempting container leases from the effect of generally applicable tax laws. To the contrary, the value of container leases is commonly subjected to income taxation, as well as value added taxation, among the Nations that are signatories to the Customs Convention. The State's tax thus does not interfere with an accepted international practice in a manner that impedes our Nation's ability to speak with one voice on matters concerning foreign commerce.

In *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U.S. 434 (1979), the California property tax on foreign-owned containers conflicted with the internationally accepted "home port" rule governing property taxation of instruments of international traffic. By contrast, the Tennessee sales tax on leases of domestically owned containers is both *consistent* with the "home port" rule and not inconsistent with any other international practice. Any potential multiple taxation that may result when other Nations impose similar sales or use or VAT taxes on these same transactions—but do not follow our domestic practice of providing a credit for the prior tax paid—cannot make the Tennessee tax unconstitutional. In this context, the neutral Tennessee tax cannot be said to be responsible for the potential multiple tax that could result from differing, rather than consistent, international practices. The States are not required by the Commerce Clause to serve as the equilibrator of all worldwide tax burdens.

III

The Tennessee sales tax is not prohibited by the Import-Export Clause. A tax on container leases "is not on the *goods* but on the *handling* of them" (*Canton R.R.*

v. *Rogan*, 340 U.S. 511, 514 (1951)). The Import-Export Clause prohibits the States from imposing customs duties on goods; it does not apply to generally applicable taxes imposed on "hauling them to or from distant points" (*id.* at 515).

ARGUMENT

I. THE CUSTOMS CONVENTIONS ON CONTAINERS DO NOT PROSCRIBE A TAX ON THE LEASE OF CONTAINERS

The Customs Conventions on Containers provide for the "temporary admission" of containers "free of import duties and taxes and free of import prohibitions and restrictions" (Pet. App. 39a, 42a). The phrase "import duties and taxes" is defined by the 1972 Convention to mean customs duties and taxes "collected on, or in connexion with, the importation of goods" (*id.* at 39a) and by the 1956 Convention to mean "all duties and taxes whatsoever chargeable by reason of importation" (*id.* at 41a).

The Tennessee Supreme Court correctly concluded that the Conventions do not proscribe application of the State's general sales tax to the lease of containers. This conclusion is supported not only by the plain and limited language of the Conventions, but also by the practice of the signatory parties. As we discuss at pp. 11-17, *infra*, contrary to petitioner's submission, the practice of many signatory Nations is to apply their general tax provisions to the value of the lease of containers used in international traffic. As we discuss first, however, the Conventions do not apply *at all* to the domestic taxation of domestically owned containers, and petitioner's invocation of the Conventions to proscribe taxation by governmental units in its own Nation is thus entirely misplaced.

1. *The Customs Conventions On Containers Are Inapplicable To The Domestic Taxation of Domestically Owned Containers*

Petitioner misunderstands the genesis and scope of 19 U.S.C. 1322(a) and the manner in which that statute interrelates with the Customs Conventions on Containers. Petitioner erroneously states that, "[a]fter its ratification, the 1956 Convention was implemented in the United States by Treasury Department regulations designating containers 'instruments of international traffic' (19 C.F.R. 10.41a(a)(1)) and by a statute excepting such instruments from application of the Customs laws. 19 U.S.C. 1322(a)" (Pet. Br. 18). Petitioner's chronology, and its understanding of the scope of these provisions, are flawed.

The 1956 Customs Convention on Containers was not acceded to by the United States until 1969. See 20 U.S.T. 333 (1969). 19 U.S.C. 1322(a) was adopted years prior to, and independently of, the Convention. The statute was enacted in 1953 to allow citizens of all Nations (including United States citizens) to obtain temporary admission of "instruments of international traffic" (*ibid.*) free "from the application of the customs laws" of this country (*ibid.*).[3] It authorizes the Secretary of the Treasury to adopt regulations designating the "instruments of international traffic" for which temporary admission is allowed. *Ibid.* Pursuant to this authority, the Secretary adopted 19 C.F.R. 10.41a(a)(1) in 1960, designating various types of "cargo vans" as "instruments of international traffic" subject to temporary admission without "payment of [customs] duty" (*ibid.*). It is pursuant to this statute and regulations—not pursuant to the Customs Conventions on Containers—that petitioner's foreign-manufactured containers have

[3] 19 U.S.C. 1322(a) was enacted as Section 14 of the Customs Simplification Act of 1953, ch. 397, 67 Stat. 516. Reciting developments in containerization practices in the shipment of merchandise, 19 C.F.R. 10.41a was adopted by T.D. 55,078, 25 Fed. Reg. 2530 (1960).

been "temporarily" admitted duty-free into the United States.

The Customs Conventions are designed to secure for domestically owned containers abroad the same temporary, duty-free admission that the United States provides for "instruments of international traffic" under 19 U.S.C. 1322(a).[4] As is customary with international agreements, however, the Conventions do not purport to dictate to each Nation how it will treat *its own citizens*. See *Maximov* v. *United States*, 373 U.S. 49, 52-56 (1963).[5] Thus, while the Conventions generally provide that "each Contracting Party shall grant temporary admission to containers" (Pet. App. 40a; see *id.* at 42a)), they further provide that (*id.* at 40a; see *id.* at 42a):

> Each Contracting Party reserves the right not to grant temporary admission to containers which have been the subject of purchase, hire-purchase, lease or a contract of a similar nature, concluded by a person resident or established in its territory.

[4] The 1972 Convention seeks to "insure United States-owned containers the same treatment in the territories of States parties to this Convention as that afforded in the United States to foreign-owned containers." S. Exec. Doc. X, 93d Cong., 1st Sess. iii (1973).

[5] In *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U.S. at 446 n.10, this Court noted that, in a bilateral tax convention between Japan and the United States, it was agreed that income derived by a resident of a Contracting State from the use and lease of containers and related equipment is exempt from tax in the *other* Contracting State. Similar agreements are set forth in, or in connection with, conventions for the avoidance of double taxation with the Netherlands Antilles (Art. 8, para. 3, 2 CCH Tax Treaties at 37,011-37,012), with Norway (Dec. 3, 1971, United States-Kingdom of Norway, Exchange of Notes, para. 1, 23 U.S.T. 2832, T.I.A.S. No. 7474), and with the United Kingdom (Apr. 13, 1976, United States-United Kingdom-Northern Ireland, Exchange of Notes, para. 4, 31 U.S.T. 5668, T.I.A.S. No. 9682). Neither the Customs Conventions on Containers, nor the conventions for avoidance of double taxation, impose an obligation upon a contracting party to refrain from imposing taxes with respect to its own residents. See *Maximov* v. *United States*, 373 U.S. at 52-56.

Since petitioner is "established" within, and a "resident" of, the territory of the United States, the status of its containers within the United States is determined independently of the Customs Conventions—under 19 U.S.C. 1322(a). The Conventions impose no obligation upon the United States, or on any State of the United States, with respect to domestically owned containers. See also note 5, *supra*.

This express limitation on the scope of the Customs Conventions is reflected in other regulatory provisions. If petitioner had purchased containers of domestic manufacture, there would have been, of course, no restriction on their use in domestic commerce. Pursuant to 19 C.F.R. 10.7(a), their movements in and out of the country would have been governed by "the general regulations governing the free entry of domestic products exported and returned" (*ibid.*). Having purchased containers "of foreign production," if petitioner had "imported [them] duty paid," they would thereafter be available for domestic commerce and would also be exempt from duty for exit and re-entry upon compliance with the formalities set forth in 19 C.F.R. 10.7(b) through (f).

As permitted by 19 U.S.C. 1322(a) and 19 C.F.R. 10.41a, however, petitioner chose to avoid paying duty on its containers of foreign origin by applying for release of those containers and filing the bond conditioned upon devoting the containers solely to international traffic pursuant to 19 C.F.R. 113.66. It is these statutory and regulatory provisions, not the Customs Conventions on Containers, that govern the treatment of domestically owned containers by the United States.

The command of Congress in 19 U.S.C. 1322(a) is quite specific and limited. It is to except designated instruments of international traffic

> from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary.

Ibid. In designating containers as instruments of international traffic, the Secretary provided only that they may be temporarily admitted without "the payment of [customs] duty" (19 C.F.R. 10.41a(a)(1)). No other state or federal taxes are proscribed by the Secretary's regulations or by 19 U.S.C. 1322(a).

The Tennessee Supreme Court correctly observed that the State's general "sales tax is not a federal customs duty" (Pet. App. 13a). See *Michelin Tire Corp.* v. *Wages*, 423 U.S. 276, 290-294 (1976). If it were a customs duty, it would violate the Import-Export Clause of the Constitution (see *ibid.*), as well as 19 U.S.C. 1322(a). Not being a customs duty, however, the state tax violates neither.[6]

2. *The Customs Conventions Do Not Proscribe Application Of General Sales Taxes To The Leasing Of Containers*

Failing to recognize that the Customs Conventions do not apply to the taxation of domestically owned containers, petitioner asserts (Pet. Br. 12-21) that the Conventions should be interpreted to proscribe application of general sales taxes to the leasing of containers. That contention is also incorrect.

a. To determine the scope of the Conventions, it is, of course, appropriate first to look to their language. See *Air France* v. *Saks*, 470 U.S. 392, 397 (1985); *Maximov* v. *United States*, 373 U.S. at 52. The limitations of the Conventions' undertakings are expressed in plain and simple terms. When applicable, the Conventions proscribe assessment of customs duties and all other taxes

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[6] Petitioner appears to acknowledge that "19 U.S.C. 1322(a) excepts instrumentalities of foreign commerce only from the Customs laws" (Pet. Br. 26 n.19). Petitioner's reliance on the notion that a statute preempting customs "duties" also preempts general state sales taxes (*ibid.*) is discussed at pages 17-21, *infra*. We note here only the significant overbreadth of such a contention, for many goods are admitted duty-free and are unquestionably not thereby made immune from general sales tax.

"collected on, or in connexion with, the importation of goods" (Pet. App. 39a) or "chargeable by reason of importation" (Pet. App. 41a). Petitioner contends (Pet. Br. 12-13) that a state sales tax on container leases is "chargeable by reason of importation" because the container is present, and available for lease, in the United States due to its importation. That contention is fundamentally misconceived.

It is not the *presence* of the container, but the *duty* or *tax* that must be "chargeable by reason of importation." The State's general sales tax on container leases is indifferent as to whether the containers are in Tennessee "by *reason* of importation" or otherwise. The tax is imposed upon the proceeds of "any transfer of title or possession, or both, exchange, barter, lease or rental * * * of tangible personal property for a consideration." Tenn. Code Ann. § 67-6-102(23)(A) (1989). Whether the property subject to the State's tax is of domestic or foreign origin has no bearing on imposition of the tax. See *ibid.*; *Washington Revenue Dep't* v. *Stevedoring Ass'n*, 435 U.S. 734 (1978) (upholding application of the State's gross receipts tax to the loading and unloading of cargo ships engaged in foreign and domestic commerce); *Hinson* v. *Lott*, 75 U.S. 148, 153 (1869).

The proscription in the Conventions of duties and other taxes "chargeable by reason of importation" is designed to capture customs or importation charges travelling under any name, but "chargeable by reason of importation." What is known as a "customs duty" in English may be described by some entirely different name or concept in the usage of other Nations: the Convention thus identifies its subject as "not only Customs duties but also all duties and taxes whatsover chargeable by reason of importation" (Pet. App. 41a).[7] By thus broadly identifying the particular subject of the Conventions, the language does not *alter* the subject of the Conventions.[8]

[7] Another example of a tax "chargeable by reason of importation" that departs from the ordinary mold of a "customs duty" was considered by this Court in *Brown* v. *Maryland*, 25 U.S. (12 Wheat.) 419 (1827). That case concerned a state license tax that applied only to persons selling "foreign articles or commodities." *Id.* at 436. The state tax did not also apply to persons selling domestic articles. The Court thus concluded that the tax was imposed solely by reason of importation and was proscribed by the Import-Export Clause. *Id.* at 439-443. See *Michelin Tire Corp.* v. *Wages*, 423 U.S. at 294-298.

The general sales tax applied by Tennessee does not differ in its treatment of domestic and foreign goods. It thus cannot be said to be "chargeable by reason of" or "in connection with" importation. The present case is similar, in this regard, to *Hinson* v. *Lott*, 75 U.S. at 153, where the Court held that a state sales tax on imported liquors did not violate the Commerce Clause because an equivalent state tax was imposed on the manufacture of liquors within the State. See also *Kraft General Foods, Inc.* v. *Iowa Department of Revenue and Finance*, No. 90-1918 (June 18, 1992), slip. op. 7.

[8] That the focus of the Conventions is on customs duties, and not upon internal taxes imposed without reference to the origin of the goods involved, is indicated not only by the narrow language employed by the Conventions but also by their Protocol of Signature. Each convention provides that the Protocol of Signature is an integral part of the convention. Para. 22, 20 U.S.T. 312; Para. 17, 988 U.N.T.S. 47. The Protocol of Signature provides: "The terms of the present Convention shall not preclude the application of national provisions or of internal agreements not of a Customs nature, regulating the use of containers." Para. 2, 988 U.N.T.S. 74. See Para. 2, 20 U.S.T. 326.

b. Petitioner states (Pet. Br. 12) that, so far as it has been able to determine, no signatory of the Conventions nor any political subdivision of any signatory (other than Tennessee) has imposed a sales tax, or other similar tax, on the lease of containers. That petitioner found its inquiry to be fruitless does not establish that there are no fruits.

Petitioner's claim that container leases are not subject to tax in other jurisdictions is incorrect. The income that petitioner derives from the lease or sale of its containers is subject to the federal income tax (26 U.S.C. 11, 61) and to state income taxes (see *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425, 448 (1980) ("[c]oncurrent federal and state taxation of income, of course, is a well-established norm"). The income derived by foreign owners of containers is also subject to tax abroad.

See note 5, *supra*. Petitioner offers no explanation why *income* taxation applied to such containers is permitted but *revenue* taxation is not.

Petitioner instead contends (Pet. Br. 15 & n.13) that Tennessee should not be allowed to impose its sales tax because various foreign nations have exempted transactions involving containers engaged in international commerce from their value added tax (VAT), which is their domestic analogue to the State's sales tax.[9] Petitioner and its amicus (United Kingdom Amicus Br. 9) suggest that the United Kingdom (UK) and other European Community (EC) Nations "refrain from imposing * * * VAT or similar taxes on international container leases" (*ibid.*). That contention is inaccurate and materially incomplete.

Under the EC Sixth Directive, and under the UK Value Added Tax Act of 1983 (on which petitioner and amicus rely), a VAT is applied in two basic situations: (i) when goods or services are supplied within the taxing jurisdiction, a VAT on the value of those goods or services is paid by the supplier; (ii) when goods are imported, a VAT on the value of imported goods is imposed on the importer.[10] The value of imported goods is defined for

[9] The basic characteristics of value added taxes are discussed in *Trinova Corp.* v. *Michigan Dep't of Treasury*, 111 S. Ct. 818, 823-824 (1991). The United Kingdom and other EC Nations apply the "credit" method of value added taxation. See *Treasury Department Report To The President: Tax Reform For Fairness, Simplicity, And Economic Growth, Vol. 3, Value Added Tax* 8 (1984):

> The credit, or invoice, method is used by all of the member countries in the European Economic Community (EEC) and by most other countries that have a value-added tax. Under the credit method, a firm's tax liability is determined by allowing the firm to subtract value-added tax paid on purchases from tax due on its sales.
>
> * * * [A]ny value added tax evaded by firms prior to the retail level would result in higher taxes at the retail level; lower tax rates at pre-retail stages would be offset by full collection of the tax at the retail level.

[10] See EC Sixth Directive, Art. 2(1) and (2); UK Value Added Tax of 1983, Art. 1. The EC Sixth Directive is reproduced at CCH

purposes of the VAT—under both the EC Sixth Directive (Art. 11B(3)(b)) and the UK Value Added Tax Act of 1983 (Art. 11(2)(b))—to include the price of the imported goods *plus* the cost of transport of those goods to the importing destination.

For example, if a London importer purchases goods at a price of $100,000 in Tennessee, leases containers in Tennessee from ITEL for $2,000 for the purpose of shipping those goods to London, and also pays a freighter $1,000 to load the containers in Tennessee and transport them to London, the UK VAT will be applied at its ordinary rate (15%) to the total sum of $103,000. It is thus incorrect to say—as petitioner and amicus have said (Pet. Br. 15 & n.13; UK Amicus Br. 8, 9)—that the UK and other EC Nations do not impose a VAT on the value of "international container leases," for the value of such leases is included in the cost of transport to which the VAT on imported goods applies.[11]

In support of the contention that the UK has "relieved [international containers] from the VAT" (UK Amicus Br. 8), the UK Brief cites various provisions of the EC Sixth Directive and of the UK Value Added Tax Act of 1983 that concern the separate VAT applicable to the "supply of goods and services" within the taxing jurisdiction. The provisions that the UK Brief cites do not restrict, but rather complement, the VAT on imported goods.

In particular, Art. 14(1)(i) of the EC Sixth Directive, on which petitioner and amicus rely, contains a telling

Common Mkt. Rep. 3507. The UK Value Added Tax Act of 1983 is reproduced at 48 *Halsbury's Statutes of England and Wales* 598 (4th ed. 1988).

[11] Alternatively, if the importer purchases $100,000 of goods in Tennessee and engages a shipping company to arrange the transport of the goods to London, and the cost of the shipment (including the allocated cost of the container lease) is $3,000, the VAT will apply to the same total of $103,000. The container lease is indirectly subjected to the VAT in this situation, but the effect of the tax is the same. See note 13, *infra*.

cross-reference (which petitioner and amicus fail to mention or address) to the tax on imported goods.[12] Article 14(1)(i) provides that "the supply of services, in connection with the importation of goods" shall not be subject to the VAT, *but only "where the value of such services is included in the taxable amount in accordance with Article 11B(3)(b)"* (*ibid.*) (emphasis added). Article 11B(3)(b), which is cross-referenced in Article 14(1)(i), is the provision that specifies that the VAT on imported goods "shall include" not only the price of the imported goods but also "incidental expenses, such as * * * transport * * * incurred up to the first place of destination." Thus, the effect of Article 14 is not to *exempt* international transport services from the VAT, as petitioner and its amicus erroneously state, but is to provide that, *when* such services are captured in the VAT on imported goods,

[12] The other provisions of the EC Sixth Directive that are cited in the UK brief are simply off the point, for they relate to the fact that goods supplied for export, and services provided to such goods, are not subject to the VAT because, once exported, any VAT paid will be credited back to the supplier. Such goods and services do not escape VAT taxation; the VAT on such goods and services is collected by the importing Nation. See EC Sixth Directive, Arts. 2(2), 11B(3)(b); UK Value Added Tax Act of 1983, Arts. 1, 11(2)(b).

The various sources cited in footnote 14 of the UK Brief also are irrelevant, both for this reason and also because they are designed to limit the broad statement in Article 6(5) of the 1983 Act that any supply of services is treated as supplied in the UK, and is thus subject to the UK VAT, "if the supplier belongs in the United Kingdom". Schedule 5, Group 10, Item 11 of the Value Added Tax narrows this broad proposition by providing that such services will *not* be treated as supplied in the UK, even when provided by a UK supplier, if they involve the "supply of services performed outside the United Kingdom, which are ancillary to the transport of goods." These provisions relate specifically to calculating the VAT on the *supply* of goods and services (see UK Value Added Tax Act of 1983, Art. 16); they do not affect calculation of the separate VAT imposed on the importation of goods. As discussed above, the VAT on imported goods specifically includes the cost of transport of the goods, including the cost of container leases in connection with such transport.

they are not subjected to an *additional* VAT as a "supply of goods and services." Far from exempting international transport services, the EC Sixth Directive and the UK Value Added Tax Act of 1983 are designed to insure that *they are subject to the VAT at least once.* See also note 9, *supra.*

To the extent that the practice of Nations informs interpretation of the Customs Conventions, as petitioner contends (Pet. Br. 15-17), it is evident that the practice of the UK and other EC Nations is to tax the value of transportation services provided by containers, including the leasing of such containers. The UK and EC practice, if relevant, thus *supports* the conclusion that the Tennessee tax on container leases is not precluded by the Conventions. If the Tennessee tax *is* precluded by the Conventions, then so too would be the UK VAT applied to similar leasing charges in connection with its VAT on imported goods.[13]

[13] The UK tax is not distinguishable from the Tennessee tax on the grounds that, while the VAT system of taxation allows the provider of goods and services and the importer a credit against the VAT owed for prior VAT taxes paid, the VAT does *not* allow such a credit for non-VAT taxes (such as the Tennessee sales tax) (see note 9, *supra*). It is purely a matter of domestic policy for the UK *not* to give such a credit for the Tennessee tax. Whether or not the UK or other EC Nations wish to give a credit for this tax has nothing to do with the Customs Conventions on Containers, which hardly can be regarded as adopting and imposing on all signatories an international VAT system of taxation.

Nor does the UK tax differ from the Tennessee tax in terms of its ultimate burden. The Tennessee tax, like the UK VAT, may be assessed on intermediaries, but the burden of the tax in both instances is generally passed on to the final consumer as a part of the cost of the final good. See *Treasury Department Report To The President: Tax Reform For Fairness, Simplicity, And Economic Growth, Vol. 3, Value Added Tax* 5, 13 (1984); J. Due, *Sales Taxation* 5, 12-25, 365-366 (1957). The Tennessee tax and the UK VAT are also similar in that certain commodities and services are exempted from their coverage. The Tennessee general sales tax differs from the VAT in that it applies at a lower rate, and with a different credit mechanism, than the UK VAT. None of these similarities and

3. *The "Objective" Of The Customs Conventions Does Not Forestall Application Of The Tennessee Tax*

Passing beyond the narrow and specific language of the Conventions, petitioner argues (Pet. Br. 17-27) that the Tennessee tax is inconsistent with the "objective" of the Conventions. Recognizing that the literal scope of the Conventions goes no farther than proscribing application of customs duties, petitioner claims that the Tennessee tax "would substantially reduce the very benefit that Congress intended to confer by exempting containers from *federal* Customs duties" (Pet. Br. 20).[14]

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differences, however, has any bearing on whether *either* tax is chargeable "by reason of importation." Indeed, since the UK applies its tax to the value of container leases at the time of importation of the goods, it would appear that the UK tax—rather than Tennessee's generally applicable sales tax—more closely proximates a tax "chargeable by reason of importation" (Pet. App. 41a) within the language of the Customs Conventions.

[14] Petitioner states (Pet. Br. 20-21 & n.15) that the duty rate generally applicable to foreign-manufactured containers (not entered into the United States under customs bond) fell from 2.5% in 1983 to 0.6% in 1986. The duty rate to which petitioner refers became zero in 1987. See Tariff Schedules of the United States Annotated (TSUS) para. 640.30 (1987).

The duty rate provided by the schedule to which petitioner refers, however, was *not* applicable to modern freight containers used for intermodal traffic and, therefore, presumably was not applicable to petitioner's containers (see note 1, *supra*). Beginning in 1983 (the first year of relevance to this case), and continuing to the present date, *no* duty is assessed on "[f]reight containers specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 40,000 pounds (provided for in 640.30) * * *." TSUS 911.80 (1983). See also TSUS 911.80 (1987); Harmonized Tariff Schedule of the United States 8609.00 (1992) (no duty for containers "specially designed and equipped for carriage by one or more modes of transport").

Petitioner thus errs in its speculations (Pet. Br. 20-21) concerning the amount of duties that it saved by entering its containers under bond during 1983-1986. No customs duties were owed during those years for intermodal cargo containers, even for foreign-manufactured

Of course, the Tennessee tax does nothing of the sort. The exemption "from *federal* Customs duties" is wholly unaffected by the Tennessee tax. The benefit conferred by exemption "from *federal* Customs duties" exists independently of the Tennessee tax and is not altered or reduced by that tax. As this Court stated in rejecting a similar claim that the "objective of [a tax] treaty" extended beyond the confines of its language, "[t]he immediate and compelling answer to this contention is that * * * the language of the Convention itself not only fails to support the petitioner's view, but is contrary to it" (*Maximov* v. *United States*, 373 U.S. at 53, 54).

Nor does *Japan Line Ltd.* v. *County of Los Angeles*, 441 U.S. 434 (1981), support petitioner's argument in this regard. In *Japan Line*, the Court relied on the Commerce Clause, not the "objective" of the Customs Conventions, to preempt the State's property tax on foreign-owned containers. See *id.* at 451-457. In the context of its Commerce Clause analysis, the Court made reference to the Customs Conventions only as indicating "[t]he desirability of uniform treatment of containers used exclusively in foreign commerce" (*id.* at 452). The Court did not adopt or rely upon the argument—advanced by petitioner in this case—that this "objective" of the Customs Conventions, by its own force, preempts the States from imposing general taxes.

Petitioner also errs in suggesting (Pet. Br. 21) that containers that have been temporarily admitted under customs bond are, by virtue of that fact, shielded from all forms of state taxation. Neither in *Japan Line* nor elsewhere has this Court adopted the broad proposition that the temporary admittance of an article under customs bond immunizes the article from all forms of federal or state taxation. In particular, *McGoldrick* v. *Gulf Oil Corp.*, 309 U.S. 414 (1940), and *Xerox Corp.* v. *County*

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containers entered without customs bond. That is not, of course, to say that duties on such articles could not be imposed in the future.

of Harris, 459 U.S. 145 (1982)—which interpreted the preemptive force of the statutory scheme involving bonded Customs Warehouses—do not support this broad submission. Instead, as this Court has stated, the scope of the preemption resulting from a customs bond must be determined by analysis of the "congressional intent" in providing bonded admission (*Xerox Corp.* v. *County of Harris*, 459 U.S. at 153).[15]

Here, as in *R.J. Reynolds Tobacco Co.* v. *Durham County*, 479 U.S. 130 (1986), imposition of the State's sales tax on container leases is "nothing more than an expected cost of doing business" (*id.* at 145). A tax on the value of such services is assessed not only by Tennessee, but abroad. There is nothing in the history of the Conventions or of 19 U.S.C. 1322(a) to suggest that Congress intended "[d]omestic producers and local taxpayers [to] 'subsidize'" (479 U.S. at 145) the use of instruments of international traffic. To the contrary, both the Conventions and the regulations under 19 U.S.C. 1322(a) go no farther than allowing temporary importation of containers without "payment of duty" (19 C.F.R. 10.41a(a)(1)). There is no suggestion in the language

[15] To the extent that the brief filed by the United States in *Japan Line* suggested that *McGoldrick* could have application in interpreting the effect of the Container Conventions (see Pet. Br. 26-27), that suggestion was not adopted by this Court in *Japan Line* and is inconsistent with the Court's subsequent analysis in *R.J. Reynolds*. Moreover, *Japan Line* concerned the treatment of foreign-owned containers under the Container Conventions. The Conventions have no application to the domestically owned containers involved in this case. See pages 7-11, *supra*. Furthermore, *Japan Line* involved application of a local property tax in a manner that was inconsistent with the customary practice of Nations (441 U.S. at 447). It was in that context that the local tax was said to conflict with the general "desirability of uniform treatment of containers involved in foreign commerce" (*id.* at 452). By contrast, there is no customary (and certainly no uniform) practice for Nations not to apply their general taxes to container leases. The unanchored goal of "uniformity" on which petitioner seeks to rely is thus not offended by the State's tax in this case.

or history of the Conventions or of 19 U.S.C. 1322(a) that petitioner's imported containers should not share the cost of government that protects them, along with domestically produced containers used in international traffic and similar instruments of domestic traffic. Cf. *Michelin Tire Corp.* v. *Wages*, 423 U.S. at 286, 288-289, 293-294; *Washington Revenue Dep't* v. *Stevedoring Ass'n*, 435 U.S. at 745, 748, 751-755.

In any event, as we have shown, nothing in the Conventions addresses the treatment afforded by any Nation to its own residents. Nothing in the Conventions or the statute proscribes duties or taxes other than those charged "by reason of importation." And, the common practice of signatory Nations is to permit general sales taxes—or value added taxes—to be applied, either directly or indirectly (see note 11, *supra*), to the value of container leases. To the extent the Conventions and the statute speak *at all* to domestic taxation of domestically owned containers, they do not proscribe sales taxes on container leases.

II. THE COMMERCE CLAUSE DOES NOT PROHIBIT STATE TAXATION OF CONTAINER LEASES

The Tennessee sales tax applies to container leases only when delivery to the lessee occurs within the borders of the State (Pet. App. 20a-21a). Petitioner nonetheless claims that, because this sales tax is not apportioned among the jurisdictions where the leased container is used (Pet. Br. 32-33), and because other Nations may also apply a sales tax to such leases (*id.* at 29-31), the State's tax offends the Commerce Clause.

Apportionment is not ordinarily required for sales taxes, precisely because "the tax is imposed only upon * * * a discrete transaction which occurs within one * * * jurisdiction only." *Wardair Canada Inc.* v. *Florida Dep't of Revenue*, 477 U.S. 1, 9 (1986). See also *Commonwealth Edison Co.* v. *Montana*, 453 U.S. 609, 617 (1981) (upholding state severance tax as to coal shipped out of

state, for "the severance can occur in no other state"); *McGoldrick* v. *Berwind-White Coal Mining Co.*, 309 U.S. 33, 58 (1940) (upholding state sales tax "conditioned upon a local activity, delivery of goods within the state upon their purchase").[16] For example in *Wardair*, the Court upheld Florida's tax on the sale of fuel to common carriers for use in international travel. 477 U.S. at 9.[17] Here, as in *Wardair*, "there is no threat of multiple international taxation" (*ibid.*) because the State's tax is limited to leases of containers delivered to lessees in Tennessee, "a discrete transaction which occurs within one international jurisdiction only" (*ibid.*).

It is true that the United Kingdom and other European Community Nations may also apply their sales tax equivalent—or VAT—to the lease of the same containers. See pages 14-17, *supra*. It also appears that those Nations would not provide a credit in calculating their VAT for sales taxes paid in non-VAT jurisdictions. See

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[16] When an article is moved from one State to another, it is not uncommon for the second State to apply a "use" tax on the article and to give a credit, in the calculation of that tax, for the sales tax paid in the first State. See *D.H. Holmes Co.* v. *McNamara*, 486 U.S. 24, 31 (1988). In calculating its use tax—which is not involved in this case—Tennessee follows the practice of providing a credit for prior sales taxes "paid * * * in another state." Tenn. Code Ann. § 67-6-313(f).

Petitioner claims, without citation of authority, that the State would interpret its use tax credit provision not to apply to foreign sales taxes (Pet. Br. 36). Even if it did, that would have no bearing on the constitutionality of the State's *sales* tax as applied in this case.

[17] In *Wardair*, the Court noted that the taxpayer's only challenge to the State's tax was based upon the claim that the tax "threaten[ed] the ability of the Federal Government to 'speak with one voice' " on matters affecting foreign commerce. 477 U.S. at 9. The Court observed that the other wing of the *Japan Line* analysis—the "threat of multiple international taxation"—was not present in that case because the tax was "imposed only upon the sale of fuel, a discrete transaction which occurs within one national jurisdiction only." *Ibid.*

note 13, *supra*. Unlike the situation that existed in *Japan Line*, however, the risk of multiple taxation that may occur in this situation is not proscribed by the Commerce Clause.

In *Japan Line*, there was an international custom (endorsed by this Court in a long line of decisions) that an ocean-going vessel (and any other instrument of international traffic) was subject to *property* taxes only at its "home port." See *Hays* v. *Pacific Mail S.S. Co.*, 58 U.S. (17 How.) 596, 599 (1855); *Morgan* v. *Parham*, 83 U.S. (16 Wall.) 471, 472 (1873); *Southern Pacific Co.* v. *Kentucky*, 222 U.S. 63 (1911). Recognizing that those decisions "expressing the mandate of the Constitution, express as well the custom of nations," the United States argued in its brief in *Japan Line* that positive law overriding the accepted practice of Nations "can be enacted only at the national level if the nation is to speak with one voice in matters of foreign commerce" (77-1378 U.S. Amicus Br. at 15 (Sept. 1978)). Since the uniform practice of Nations had been "to exempt foreign-owned" vessels and containers from property taxes, and to allow the "home port" Nation to tax the full value of such property, the United States submitted in *Japan Line* that the California tax was responsible for the resulting double taxation of the property and that it should therefore yield under the Commerce Clause (*id.* at 28-29 & n.22).

While the Court found no fixed, constitutional requirement for the "home port" rule in *Japan Line* (441 U.S. at 441-444), the Court agreed that the California property tax on foreign-owned containers conflicted with established international practice (*id.* at 447) and thereby interfered with our government's ability to "speak with one voice when regulating commercial relations with foreign governments" (*id.* at 449 (quoting *Michelin Tire Corp.* v. *Wages*, 423 U.S. at 285)). The Court also noted that, since "the country of domicile" has the "right, consistently with the custom of nations, to impose a tax on [the] full value" of "instruments of international traffic"

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(*id.* at 447), a double tax on the property "inevitably results" when the State taxed the foreign-owned instruments of international traffic. *Ibid.*

There is no international custom exempting the owners of containers from tax *in their own Nation.*[18] See notes 5, 13, *supra.* The rationale for the "home port" rule requires precisely the opposite conclusion: international custom *permits* governments to tax containers owned domestically. Moreover, as the EC and UK practice reflects, there is also no international custom exempting the value of container leases or other international transport services from general sales tax or VAT taxation. See pages 14-17, *supra.*

Far from conflicting with international custom, the Tennessee tax appears to promote it. The Tennessee tax thus does not interfere with our ability "to speak with one voice" on this issue involving foreign commerce. If the United States desires, through future multilateral negotiations, to seek an international custom or practice proscribing such taxation, there will be time enough for appropriate conventions or treaties to be adopted. Until then, we see no deviation from international custom in the Tennessee tax sufficient to require constitutional proscription under the Commerce Clause.

Nor, in this context, can it be said that Tennessee is responsible for any duplication in the taxes that the UK or other EC Nations may impose as the result of those Nations' refusal to provide a credit for the Tennessee tax in their VAT calculations. See note 13, *supra.* While the States of the United States customarily provide such a

[18] Petitioner's argument would suggest that a state retail sales tax could not constitutionally be applied to the sale or lease of an airplane for use in transporting passengers internationally if the foreign nation elected to impose a "use" tax on the airplane and gave no credit for prior sales tax payments. The Commerce Clause, however, does not deprive the States of all taxing authority with respect to instruments employed, or services provided, in connection with international trade. See, *e.g., Washington Revenue Dep't* v. *Stevedoring Ass'n,* 435 U.S. at 743-751.

credit in imposing use taxes on goods already subjected to sales tax in another State (*e.g., D.H. Holmes Co.* v. *McNamara,* 486 U.S. at 31; note 15, *supra*), Tennessee can not be faulted for the failure of *other* Nations to provide such a credit in application of their conceptually different tax systems. Any double tax on container leases that results in these circumstances is the product of differing national tax practices, not international custom. The Commerce Clause has never been held to require the States to serve as the equilibrator of world-wide tax burdens.

It bears emphasis that the "multiple taxation" argument that petitioner advances under the Commerce Clause with respect to container leases is equally applicable, and equally unavailing, with respect to any other product sold or service provided in connection with export commerce. Foreign nations that apply a VAT system of taxation—and that do not give a credit in the calculation of their VAT for sales taxes collected in the United States—impose a tax on all goods (including the cost of transporting those goods) imported in their borders; in this respect, these foreign taxes could be said to create a "multiple" burden on export traffic. Under petitioner's view of the Commerce Clause, the States would be deprived of their ability to apply neutral sales and gross receipts taxes not only to all such export activities, but also to the initial and intermediate economic activities that precede the export stage. There is no basis for such an intrusive and expansive interpretation of the Commerce Clause. See *Washington Revenue Dep't* v. *Stevedoring Ass'n,* 435 U.S. at 757; *Canton R.R.* v. *Rogan,* 340 U.S. 511 (1951).

For the same reasons that led this Court in *Japan Line* to conclude that foreign nations possess a prior right to tax foreign-owned instrumentalities of commerce, so too does this Nation—and the States—possess the power to tax domestically owned instrumentalities of commerce.

III. THE IMPORT-EXPORT CLAUSE DOES NOT PROHIBIT STATE TAXATION OF CONTAINER LEASES

Petitioner also asserts (Pet. Br. 40-47) that the Tennessee sales tax on container leases is barred by the Import-Export Clause of the Constitution and claims that the decisions upholding the state tax in this case "undeniabl[y]" conflict with *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U.S. 69 (1946). *Richfield Oil* concerned application of a state sales tax to oil sold and delivered into a tanker waiting in the Los Angeles harbor for shipment to Auckland, New Zealand. The Court held that the State could not impose its sales tax on this export sale of goods.[19] By contrast, in *Michelin Tire Corp.* v. *Wages*, this Court upheld application of a general state tax to imported goods awaiting shipment in inland warehouses. 423 U.S. at 302. Petitioner explores at some length (Pet. Br. 42-47) whether the Court's reasoning in *Michelin Tire* undercuts the rationale of *Richfield Oil* and deprives it of further validity. See also *Joy Oil Co.* v. *State Tax Comm'n*, 337 U.S. 286 (1949); *Empresa Siderurgica* v. *County of Merced*, 337 U.S. 154 (1949); L. Tribe, *American Constitutional Law* 472-473 (2d ed. 1988).

However interesting that question might be, it has no bearing on the disposition of this case. Neither *Michelin Tire* nor *Richfield Oil* applies here because the leasing of containers does not concern either "exports" or "imports." The American-owned truck or railroad car that carries goods from points in this country to consignees in Canada or Mexico *carries exports, but is not itself an export*. The same is true of American-owned ships or

[19] In *Louisiana Land & Exploration Co.* v. *Pilot Petroleum Corp.*, 900 F.2d 816 (5th Cir.), cert. denied, 111 S. Ct. 248 (1990), the court similarly concluded that the Import-Export Clause proscribed application of the state sales tax to an export sale of oil into a tanker waiting in the Mobile harbor for shipment to Halifax, Nova Scotia.

airplanes carrying goods to more remote consignees. The goods will be left at their foreign destinations while the instrument of international traffic, not itself an export, returns for further voyages. The same is true, of course, of the containers that petitioner leases for the carriage of goods out of the United States. The containers will be returned to petitioner for further leases and further voyages. The goods the containers carry are exports, but the containers are not.

This distinction was recognized by this Court in *Canton R.R.* v. *Rogan*, 340 U.S. 511 (1951). The railroad in that case operated solely within Baltimore, moving freight between its marine terminal at the port of Baltimore and connecting railroads. Invoking the *Richfield* case, the railroad claimed that the portion of its gross receipts that represented the proceeds of handling imports and exports was exempt from Maryland's gross receipts tax. In rejecting that claim, the Court stated (*id.* at 513-514):

> If this were a tax on the articles of import and export, we would have the kind of problem presented in * * * *Richfield Oil Corp.* v. *State Board* * * * and *Joy Oil Co.* v. *State Tax Comm'n* * * *. But the present tax is not on the articles of import and export [.] * * * The difference is that in the present case the tax is not on the *goods* but on the *handling* of them at the port.

See also *Washington Revenue Dep't* v. *Stevedoring Ass'n*, 435 U.S. at 757 (upholding a gross receipts tax that fell "upon a service distinct from the goods and their value").[20]

[20] In *R.J. Reynolds Tobacco Co.* v. *Durham County*, 479 U.S. at 153, the Court rejected the claim that a state ad valorem property tax interfered with federal regulation of foreign commerce or constituted a "duty" proscribed by the Import-Export Clause. The Court noted that the State's generally applicable tax "falls on imported and domestic goods alike and does not single out imported goods for unfavorable treatment." *Ibid.* That same conclusion applies to this case.

As the Court concluded in *Canton R.R.* v. *Rogan*, "if the handling of the goods at the port were part of the export process, so would *hauling them to or from distant points* or perhaps mining them or manufacturing them." 340 U.S. at 515 (emphasis added). The Tennessee Supreme Court was thus correct in concluding (Pet. App. 18a) that application to container leases of a generally applicable tax on the sale or lease of tangible personal property is not a tax on exports even though the leased containers may be used in "hauling [imports and exports] to or from distant points" (340 U.S. at 515).

CONCLUSION

The judgment of the Supreme Court of Tennessee should be affirmed.

Respectfully submitted.

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